

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CONTINENTAL CASUALTY COMPANY,

Plaintiff,

v.

WILLIAM C. HARSHA, et al.

Defendants.

Case No. 15-11943

HON. TERRENCE G. BERG

HON. DAVID R. GRAND

**ORDER GRANTING PLAINTIFF'S MOTION FOR LEAVE TO FILE
SECOND AMENDED COMPLAINT (DKT. 26)**

This is a declaratory judgment action. On May 29, 2015, Plaintiff Continental Casualty Company filed suit against members of a law firm and others, some 14 Defendants in all, seeking a determination that it is not liable to pay claims under a professional liability insurance policy. (Dkt. 1.) On July 23, 2015, Plaintiff filed its first amended Complaint in the above-captioned case. (Dkt. 18.) In its amended Complaint, Plaintiff omitted Defendant Angela Thompson, who had been named in the original complaint (Dkt. 1), because Defendant Thompson had since voluntarily filed for bankruptcy. (Dkt. 18, ¶ 20.) Plaintiff explained that it intended to file “a motion with the Bankruptcy Court seeking leave to further amend its complaint in this action to rename Thompson as a defendant.” (*Id.*) As a result of the bankruptcy filing, the Court entered a notice on July 28, 2015 staying all proceedings against Defendant Thompson in accordance with 11 U.S.C. § 362(a). (Dkt. 23.)

On August 3, 2015, Plaintiff was granted relief from the automatic stay in Defendant Thompson’s bankruptcy case. (Dkt. 26, Ex. A.) Before the Court is

Plaintiff's August 13, 2015 motion for leave to file its second amended Complaint "for the sole purpose of renaming Angela Thompson" as a Defendant in this case. (Dkt. 26, p. 1.) Plaintiff also requests that all Defendants be ordered to respond to the second amended Complaint within 14 days of its filing. (*Id.* at 16.) No Defendant has challenged Plaintiff's motion for leave to file its second amended Complaint,¹ and the deadline to do so has passed. The Court will therefore consider this motion to be unopposed.

The decision to grant or deny a motion to amend a pleading is within the sound discretion of the Court. *See Robinson v. Michigan Consol. Gas Co., Inc.*, 918 F.2d 579, 591 (6th Cir. 1990). A party may amend a pleading after the opposing party's responsive pleading has been filed only by leave of court or by written consent of the adverse party. *See* Fed. R. Civ. P. 15(a)(2). Rule 15(a) provides that "leave shall be freely given when justice so requires." *Id.* Amendments, however, should not be permitted in instances of "undue delay in filing, lack of notice to the opposing party, bad faith by the moving party, repeated failure to cure deficiencies by previous amendments, undue prejudice to the opposing party, and futility of amendment." *Foman v. Davis*, 371 U.S. 178, 182 (1962).

Applying this standard, the Court finds that granting Plaintiff leave to file a second amended Complaint is appropriate. There is no evidence of undue delay, lack

¹ According to Plaintiff, Defendants Laura Abbonizio, Ronald Cichon, Tee-Huan Harvey, Edward Szachta, Mary Van Hevele, Brian J. Benner, and Brian J. Benner, P.C., d/b/a Benner & Foran have concurred in the motion to amend. (Dkt. 26, p. 2.) Moreover, these Defendants have agreed to Plaintiff's request that, if the second amended Complaint is accepted for filing, Defendants shall respond within 14 days. (*Id.*) The remaining Defendants, Stephen Conley, Jonathan Conley, Nathan Conley, William C. Harsha, David A. Priehs, Leo Foran, Beverly A. Gorton, and Angelo Yates have apparently not responded to Plaintiff's request for concurrence, nor have they filed any opposition to Plaintiff's motion. (*Id.* at 2-3.)

of notice, bad faith, repeated failure to cure deficiencies, or undue prejudice to Defendants. Accordingly, Plaintiff's motion for leave to file its second amended Complaint (Dkt. 26) is **GRANTED** and the Complaint attached to the motion as Exhibit B is accepted for filing. Defendants are hereby **ORDERED** to respond to the second amended Complaint within 14 days of the date of this Order.

SO ORDERED.

s/Terrence G. Berg
TERRENCE G. BERG
UNITED STATES DISTRICT JUDGE

Dated: September 3, 2015

Certificate of Service

I hereby certify that this Order was electronically submitted on September 3, 2015, using the CM/ECF system, which will send notification to each party.

By: s/A. Chubb
Case Manager